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WTO Appellate Body Upholds Panel Ruling Against U.S. Revenue Act of 1916

The Appellate Body of the World Trade Organization has upheld a dispute settlement panel finding that the U.S. Revenue Act of 1916 is inconsistent with WTO antidumping rules.

“We believe the panel and Appellate Body should not have assessed the 1916 Act under WTO antidumping rules, because it is more akin to an antitrust law than an antidumping law,” said United States Trade Representative Charlene Barshefsky. She said the U.S. will examine the Appellate Body report to determine appropriate next steps.

The Appellate Body upheld the panel’s findings that WTO antidumping rules are applicable to the 1916 Act and that the 1916 Act is inconsistent with these rules because the civil and criminal penalties provided for in the 1916 Act go beyond the responses which those rules authorize.

Background

Title VIII of the Revenue Act of 1916, under the heading of “Unfair Competition,” permits private lawsuits for treble damages and criminal penalties against importers of products sold at below market value. In addition to showing the requisite low-priced imports, a successful 1916 Act claim must prove a specific intent to injure a U.S. industry. This provision is commonly referred to as the Antidumping Act of 1916, but despite its popular name, the 1916 Act is not the antidumping law under which the Import Administration of the Department of Commerce applies antidumping duties. Instead, it addresses anticompetitive practices and is more akin to an antitrust statute than an antidumping statute.

In separate cases initiated by the European Commission and Japan, a WTO dispute settlement panel found earlier this year that the 1916 Act is inconsistent with WTO rules because the specific intent requirement does not satisfy the material injury test required by the WTO Antidumping Agreement, and because the civil and criminal penalties provided in the 1916 Act go well beyond the antidumping measures (the imposition of duties on imports sold at less than fair value) provided for in the Antidumping Agreement. The antidumping law enforced by the Commerce Department (codified in the Tariff Act of 1930, as amended) provides for the imposition of such duties if the U.S. International Trade Commission determines that a U.S. industry is materially

injured by reason of such imports. That law remains unaffected by the WTO rulings.

The Appellate Body affirmed the panel's findings that the panel had jurisdiction to consider the matter, that the Antidumping Agreement and GATT 1994 Article VI apply to the 1916 Act, and that the Act is inconsistent with these WTO rules because the civil and criminal penalties provided for in the 1916 Act go beyond the responses which those rules authorize.

The Appellate Body report is available on the WTO website at <http://www.wto.org>.